A year can go so fast. It seems like it was only yesterday that I became Chair. Having been chair of another section – I had some idea what it would be like. One way to gain some control of the process was to set specific goals for my term. As I said in my first message, I really had three main goals this year: 1) have a successful retreat to make long range plans for the section; 2) publish the pro se handbook; and 3) get government lawyers more involved in the section. We had a very successful year even though some of these goals were not accomplished. As is often the case, things happen that make you revisit your plans. One thing that I did not know about before the year started became a very successful event for the section and may well become one of our signature events in the future.

This year we conducted the first Ap-
CHAIR'S MESSAGE
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It was a joint project of the Section and the Conference of District Court of Appeal Judges. We modeled it after a national conference held last year in Washington, D.C. The idea was to get a group of appellate judges together with appellate lawyers, as well as some trial and administrative judges, to discuss the appellate process. Three attorneys from the section, Celene Humphries, John Crabtree and Harvey Sepeler, worked with three judges from the Conference, Chief Judge Charles Kahn, Judge Martha Warner and Judge Peter Webster, to structure a conference that would provide a suitable forum for meaningful dialogue. The conference was held on Wednesday during the June Bar convention. There were two major areas of discussion – use of the PCA, and when and how much to write when disposing of a case by order. The pro se handbook will not be published by June 30th, but we are very close and it should be published soon. One of the main items discussed at the retreat was encouraging more government lawyers to become involved in the section. We decided to schedule local outreach programs. One such event is already in the works for Tallahassee.

There are many people I need to thank. Chair-elect Susan Fox did an outstanding job organizing and conducting the retreat. Hala Sandridge did her excellent job, again, of coordinating all the social events at the retreat. Celene Humphries did a great job as the program chair, handling the regular programs and becoming the main point person on the Appellate Justice Conference. And, of course, the dessert reception at the conference was absolutely great! Dorothy Easley took over for me to chair the Pro Se Handbook committee. She reorganized the entire project and got it back on track. In addition to them, everyone who chaired anything this year just stepped up and got the job done. Finally, I have to thank Betsy Gallagher for being the editor of The Record. It is one of the most difficult jobs in the Section and Betsy always maintained a smile, even when my message was VERY late.

This year has been fun and I look forward to being the immediate past Chair. I plan to remain active in the Section.

Finally, one idea that came out of the retreat was that we should all try and recruit new members to the Section. We learned the most successful way to get new people is ask someone you know to join and become active. There are about 1,400 members of the Section. Each of us knows someone they could ask. If each person recruits one new member then at this time we can say we have 2,800 members.

PASSING THE TORCH
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and also prepare for the technological progress that lies ahead.

Also, once I settle in to my new position, I would like to have a seminar at the Court for appellate attorneys to discuss how a case is handled in the clerk's office. I think open dialogues between attorneys and staff will improve efficiency. I'd like to work together to make the system work better for both the litigants and the Court.

What changes are you planning to implement?

My basic approach during this first six months has been to not make any drastic changes. As e-filing is implemented, there will be changes in the workflow, so there will have to be some adjustments made at that point.

I also plan to utilize the form orders that are part of Florida's state-wide case management system. The orders are used by all the other district courts for routine motions and are automatically docketed, making the processing of orders more efficient. This will also make the transition to e-filing smoother.

What are your biggest hurdles?

It's not necessarily a hurdle but rather, an adjustment. I have to remember that I'm no longer a Central Staff Attorney - I miss doing the legal research. The adjustment has been to realize that my duties are different.

What's your biggest challenge?

The biggest challenge will definitely be implementing the e-filing system. The clerks of the other DCAs have been very helpful. Shortly after I took the position, I attended the annual Judges Conference with all of the other clerks of the district courts of appeal. I had the opportunity to spend some time with them, discuss the issues that we've all been facing, and they have all been very helpful and supportive.

The job is fascinating to me because it requires a totally different
view of the Court. As opposed to addressing legal issues, I am dealing with the mechanics of the Court. How does a motion get through the Court, how is a case opened -- there are so many different steps that are taken before a law clerk or other staff attorney even knows anything about a particular case. It has been very interesting.

**When is the 5th DCA planning to implement e-filing?**

We haven’t received a schedule for implementation of the state-wide automated e-filing system. The Supreme Court of Florida will be the first court to have the state-wide system installed. After it has been tested and accepted, it will be installed in the district courts, beginning with the Fourth District. It’s uncertain which district court will follow the Fourth District.

**What are your greatest concerns about e-filing?**

My concern, and the concern of all the other clerks, is what will happen to the pro se litigants who are unable to access a computer to complete the e-filing? I think we will either have to keep the paper filing system in place for pro se pleadings, or all the pro se pleadings will have to be scanned so that they can be e-filed.

The long-term goal is to not have any hard files. The judges will be able to look at every document in the file on their computer screens. I think it’s going to be a wonderful system – very helpful to both the courts and to the attorneys once the issue regarding the pro se filing is resolved.

**What advice would you give to lawyers about dealing with the clerk’s office?**

We’re here to help you as much as we can, but we can’t give legal advice -- so don’t be surprised when a member of the clerk’s staff tells you that. Also, read the rules of appellate procedure because there is a lot of useful information in there! And when you call and ask for information about a case, please have your appellate case number handy!

Also, the drop box at the Fifth District is provided as a convenience to the attorneys but putting something in the drop box does not resolve a potential jurisdictional timeliness issue. For instance, if your motion for rehearing is due on Friday - that means Friday by 5:00 p.m. in the clerk’s office – not in the drop box (even if it’s at 8:00 p.m.). See Capone v. Florida Board of Regents, 774 So. 2d 825 (Fla. 4th DCA 2000).

**What appellate rules are most often not followed?**

Attorneys filing motions for extension of time without contacting opposing counsel. Rule 9.300 says “shall” not “may,” so when we receive a motion that does not indicate what the opposing counsel’s position is on the extension, we deny it. The other thing we see frequently is attorneys filing untimely motions for extension of time. The motion must be filed before the due date has passed.

In a civil case, a conformed copy of the order being appealed (with the circuit court’s date stamp) must be attached to the Notice of Appeal. If not, we can’t tell if there is a jurisdictional problem; we can’t tell who the trial judge was – and therefore are unable to check for conflicts, etc.

**What appellate rules would you change?**

Unlike Rule 9.200, which specifies that transcripts must be prepared in volumes not to exceed 200 pages, there is no such limitation in Rule 9.220 which deals with the preparation of appendices. We’ve received 1,500 pages in one volume before! Please make your volumes 200 pages or less – they’re much easier to deal with!

**Tell me about a typical day.**

Much of my time is spent processing motions. When I come in, I review the non-routine motions that have been filed to ensure that they are distributed to the proper panel. For instance, once a merits panel has been assigned, all motions go to that panel.

I then address routine motions, as authorized by the Court. The afternoons are spent reviewing mail, including pro se correspondence, preparing orders on non-routine motions based on the judges’ directions, and responding to questions from the Court. I also periodically review files to ensure that they are being timely prosecuted.

**What are your interests and hobbies outside of work?**

I’m very involved in my church, Grace Episcopal of Port Orange. I enjoy going to theaters and concerts. I really enjoy the Seaside Music Theater in Daytona Beach. I love going to The London Symphony Orchestra when they come every other year. I spend as much time as I can visiting my family in California, Virginia, and Michigan. And I have a niece who is going to the University of Virginia law school!

**Endnotes**

1Shannon McLin Carlyle formed The Carlyle Appellate Law Firm and co-founded The Florida Appellate Alliance after serving as a law clerk at the Fifth District Court of Appeal. Ms. Carlyle serves on the Executive Council of The Florida Bar’s Appellate Practice Section and as an ad hoc member of the Appellate Court Rules Committee. She is also a Board Certified Appellate Lawyer, a Board Certified Appellate Mediator, and is AV rated by Martindale-Hubbell.
The Board of Legal Specialization and Education and the Appellate Practice Certification Committee are pleased to announce the following attorneys are now Board Certified as of June 1, 2006:

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Appellate Jurisdiction Under Rule 9.110(k) Partial Final Judgments – What’s Appealable? by Craig B. Hewitt, II

This article is the second in a series discussing the appellate jurisdiction of Florida’s District Courts of Appeal. Hopefully, it will save appellate practitioners time and money, and improve the practice of appellate law in Florida. The focus of this article is on rule 9.110(k), Florida Rules of Appellate Procedure, titled “Review of Partial Final Judgments,” an important avenue of appellate review. While this rule encompasses a broad range of orders, “not all partial judgments are immediately appealable.” More importantly, the rule provides the only time to take an appeal from a partial final order that disposes of the entire case as to a party. Thus, it is necessary for the appellate lawyer to understand the (somewhat oxymoronic) term “partial final judgment,” and to have some practical knowledge of the application of this term to determine whether any given order is appealable.

“Partial Final Judgment” as a Term of Art

A partial final judgment is partial, and in a sense interlocutory, in that it does not bring an end to the judicial labor required in the case as a whole. It is final in the sense that the order constitutes an end to the judicial labor required as to a discrete portion of the case. There are “two recognized types of partial final judgment[s]: (1) a partial judgment that is final as to a discrete issue, and (2) a partial judgment that finally disposes of a party.” The concept is simple with regard to a party because either the party is removed from the litigation by the order in question, in which case it is a partial final judgment, or the party remains involved in the litigation in some way and the order is not a partial final judgment. A partial final judgment as to an issue is more difficult to recognize, but “when it is obvious that a separate and distinct cause of action is pleaded . . ., it should be appealable if dismissed with finality at trial level.” Thus, an order that disposes of a distinct cause of action that is unrelated to the remaining claims is an appealable partial final judgment. The determinative factor is whether the claims arise from a single transaction or have a common set of facts, i.e., whether there is a factual overlap. It is irrelevant whether different legal theories were pled or additional facts are involved.

“Not surprisingly,” Florida’s District Courts of Appeal dismiss a number of appeals every year because the orders appealed were not appealable partial final judgments. There are several reasons that such dismissals are common. First, partial final judgments are subject to the same jurisdictional problems that may affect rendition or finality of a final order. Therefore, whether labeled a “partial final judgment” or not, the order must be “final” as to some portion of the case to be appealable under the rule. Second, if an order could be construed as a partial final judgment, the cautious attorney may file an appeal, even when there are obvious finality problems, “in an abundance of caution” to avoid missing the window to file an appeal. This is especially true when there will not be another chance for appellate review of the order once a final order is issued. Third, assuming the order is “final” as to some portion of the case, rule 9.110(k) does not apply unless the order completely disposes of either a party or a separate and distinct portion of the case. Finally, unlike final orders, these orders necessarily leave something pending in the trial court that may interfere with the appellate court’s jurisdiction. Therefore, every partial final judgment should raise red flags concerning the appellate court’s jurisdiction, making it less likely that a jurisdictional problem involving such an order will be overlooked.

This article will explain how to determine whether an order falls into either category of partial final judgment so as to be immediately appealable under the rule. However, most partial judgments are not appealable because they are interrelated with remaining portions of the case.

Applying Rule 9.110(k)

What do you do when faced with a written order from the trial court that has incorrectly decided an important portion of your case, such as a claim or a counterclaim, but it is not an appealable non-final order under rule 9.130, Florida Rules of Appellate Procedure? Your options may include filing an appeal within 30 days of the date of rendition of the offending order; waiting until the trial court issues a final order and including your arguments regarding the non-final order in the plenary appeal; or, you might file an extraordinary writ petition alleging irreparable harm. Ultimately, what you decide to do will depend on factors that are unique to your case and your client. However, procedurally your options may be limited, making the decision as to what to do fairly easy. If the order is a partial final judgment, you may have to immediately file an appeal to preserve your client’s appellate rights. On the other hand, if the order is not a partial final judgment, then filing an appeal may simply be a waste of time and the filing fee. But, how do you tell whether or not the order is a partial final judgment?

Both types of partial final judgments – as to a party and/or as to an issue -- must satisfy what is essentially a two-pronged test in order to be appealable under rule 9.110(k). The first prong focuses on the form of the order and asks whether the order is “final” as to some portion of the case. The second prong of the test focuses on the extent of the finality and asks whether any claim or claims remain pending that involve a related issue or the same party as that disposed of by the order. The first prong of the analysis is the same for either type of order. For partial final judgments as to a party, the second prong of the test is whether that party is still involved in the litigation after entry of the order in question. For partial final judgments as to an issue, the second prong of the test is whether any re-
related claim remains in the case after entry of the order in question. Whether an order is “final” as to some portion of the case is determined by reviewing the form of the order as to that portion of the case. The traditional test to determine whether an order is final is “whether the order in question constitutes an end to the judicial labor in the cause, and nothing further remains to be done by the court to effectuate a termination of the cause as between the parties directly affected.” This traditional test must be relaxed somewhat with respect to partial final judgments because there will necessarily be further action required by the trial court as to the remaining issues or parties. However, at a minimum, every partial final judgment must include language of finality sufficient to indicate that the trial court has concluded that portion of the case and nothing further is contemplated. Orders that do not enter judgment but merely contain language expressing entitlement to relief or entitlement to a dismissal; orders that grant a motion without entering judgment; and orders that reserve jurisdiction to consider some aspect of the partial final judgment are a few examples of orders that are not final in form and therefore cannot be partial final judgments.

After determining that an order contains sufficient language to be “final” as to a portion of the case, the second step of the analysis requires a comparison of the matters and parties disposed of by the order and those that remain pending. If the litigation involved more than two parties, begin this prong of the analysis by determining whether the order finally disposes of the entire case as to a party, which is relatively easy. To do this, simply review the pleadings to determine what claims have been raised in the case, noting both who raised them and who they were raised against. Then, check off those claims that were disposed of by the order in question. If the order disposed of any claim or claims involving a party who is not also a party to one of the remaining claims, then the order is a partial final judgment as to that party and must be appealed immediately. Most orders that dispose of an entire case as to a party are clearly appealable partial final judgments and the orders make this clear by including language such as “go hence without day.” However, if an order is final as to a party and disposes of the entire case as to that party, the order must be appealed within 30 days of rendition. On the other hand, if each party that began the case, or had been brought into the case, remains involved in the litigation on one side or the other of any remaining claim, then the order is not a partial final judgment as to a party.

The second step of the analysis to determine whether an order is appealable as a partial final judgment as to an issue is more complicated, but should be approached with the same practical view of the pleadings. As with a partial final judgment as to a party, the analysis begins with a review of the pleadings. First, list the various claims raised in all the pleadings. Next, note the necessary facts that were alleged to establish and support each claim. Then, determine which claims have been resolved with finality and which are still pending. Compare the factual basis for each of the claims resolved by the order in question with the factual basis for the remaining claims. If any of the facts necessary to establish or support a claim that was disposed of by the order in question are also necessary to establish or support any of the remaining claims, then the order is not final as to that claim. However, a factual relationship between claims where the overlapping facts are not necessary to establish or support either claim may be so attenuated that an order disposing of one claim is nevertheless a partial final judgment. If a claim disposed of by the order in question does not involve any of the same facts as a pending claim, then the order is appealable as a partial final judgment as to that claim.

Occasionally, it will appear that an order has the effect of determining other matters besides the claims that are resolved with finality -- for example, where the disposition of one claim would render other claims moot. In this situation it may seem reasonable to conclude that those other claims are also disposed of by the order. However, if the order only addresses one claim
then the other claims remain pending until they are also disposed of by the trial court. If you are faced with this situation, obtain an order specifically addressing and disposing of the additional matters from the trial court. If an order will have such an effect on other claims not directly addressed by the order, it is likely that those other matters are related.

In conclusion, rule 9.110(k) provides an avenue for immediate appeal of a large number of orders that do not finally bring an end to the judicial labor in a case and do not fall within any category of appealable non-final orders, but are nevertheless final as to a portion of the case. When an order totally disposes of an entire case as to a party, it is final as to that party and must be immediately appealed. An order disposing of a discrete claim may be appealed right away or at the end of the entire litigation. To determine whether an order is an appealable partial final judgment, review all of the pleadings filed in the case. A partial order disposing of some claims raised in the pleadings will not be a partial final judgment as to a party unless that party is no longer involved in any of the remaining claims; nor will it be a partial final judgment as to an issue unless that claim is factually unrelated to any of the remaining claims. Because the Florida Rules of Appellate Procedure do not require the appellant to file the pleadings along with the notice of appeal, it is often difficult for the court to determine whether it has appellate jurisdiction to review a partial final order. Therefore, when appealing pursuant to rule 9.110(k), the best practice is to include copies of the operative pleadings in the case below. Failing this, counsel should expect that the appellate court will issue an order asking for them.

Endnotes
1 Craig B. Hewitt, II is a career attorney with the First District Court of Appeal. Since 2001, he has reviewed civil and administrative notices of appeal and the orders on appeal to determine whether the orders were properly before the Court for review.
2 Hallock v. Holiday Isle Resort & Marina, Inc., 885 So. 2d 459, 461 (Fla. 3d DCA 2004) (noting that the exception only applies to partial judgments that are unrelated to the remaining portions of the case); Bay & Gulf Laundry Equip., Inc. v. Chateau Tower, Inc., 484 So. 2d 615 (Fla. 2d DCA 1985) (noting that the rule does not expand the class of orders that are immediately appealable).
3 If a partial final judgment totally disposes of an entire case as to any party, it must be appealed within 30 days of rendition. Fla. R. App. P. 9.110(k). The purpose of the rule was to avoid the procedural trap created by Mendez v. West Plagler Family Ass’n, 303 So. 2d 1 (Fla. 1974), wherein the court held that an order disposing of a separate and distinct cause of action was immediately appealable as a final order: See Bay & Gulf Laundry Equip., 484 So. 2d at 616. Under Mendez, an order disposing of a separate and distinct cause of action had to be immediately appealed or the right to appeal was lost. Rule 9.110(k) provides that such orders may be appealed either within 30 days of rendition or at the end of the litigation. However, when a party is dismissed by a partial final order, the order must be appealed immediately. Therefore, the trap remains to this limited extent.
4 Nearly twenty years ago, the Third District Court of Appeal noted that there is no such thing as a judgment that is both partial and final. See Del Castillo v. Rabor Pharmacy, Inc., 512 So. 2d 315, 319 n.12 (Fla. 3d DCA 1987). Rather, this type of order should be characterized as a final judgment disposing of a separate controversy between the parties. Id. However, because the Florida Rules of Appellate Procedure specifically provide for review of “partial final judgments,” it continues to be a term of art.
5 Shepardson v. Shepardson, 820 So. 2d 360, 362 (Fla. 1st DCA 2002); see also Shepard v. Ouellette, 854 So. 2d 251, 252 (Fla. 5th DCA 2003) (holding order was not a partial final judgment because it neither disposed of the entire case as to a party or an independent matter).
6 Although recent cases refer to separate and distinct “issues,” the concept is rather narrower than what may be considered an issue generally, such as discovery and trial management issues, which are not generally reviewable by appeal. See Pescod v. Wells Road Veterinary Med. Ctr., Inc., 748 So. 2d 1095 (Fla. 1st DCA 2000). Instead the rule should be viewed as referring to the claims, counts, or causes of action raised in the pleadings. Mendez, 303 So. 2d at 5; S. L. T. Warehouse Co. v. Webb, 304 So. 2d 97, 100 (Fla. 1974).
7 Mendez, 303 So. 2d at 5.
8 Relatedness in this context is determined by whether there is a factual overlap. Massachusetts Life Ins. Co. v. Crapo, 918 So. 2d 393 (Fla. 1st DCA 2006). Note that causes of action, or claims, may be related for some purposes but not for others. See generally Tyson v. Viacom, Inc., 890 So. 2d 1205 (Fla. 4th DCA 2005) (en banc) (Gross, J., concurring specially discussing relatedness of claims in the context of res judicata and the rule against splitting a cause of action) (May, J., dissenting (defining cause of action for res judicata and the rule against splitting a cause of action)).
10 Howland v. Dep’t of Transp., 826 So. 2d 1080 (Fla. 1st DCA 2002) (determining claims were interrelated because they involved the same transaction); Croteau, 721 So. 2d at 387 (finding claims were not related because they were grounded on separate and distinct facts); Oskam v. Mount, 484 So. 2d 95 (Fla. 1st DCA 1986) (finding claims interrelated where they involved identical facts regardless of the different legal theories underlying the claims); Altair Maintenance Serv., Inc. v. GBS Excavating, Inc., 655 So. 2d 1281 (Fla. 4th DCA 1995) (adding that the test is not whether different legal theories or additional facts are involved). But see Campbell v. Gordon, 674 So. 2d 783 (Fla. 1st DCA 1996) (finding order dismissing permissive counterclaim is an appealable partial final judgment because the definition of a permissive counterclaim is one not arising out of the same transaction or occurrence as the opposing party’s claim).
11 See also Shephard v. Robert Clary, Inc., 748 So. 2d 1095 (Fla. 1st DCA 2000).
Report from the Appellate Practice Retreat
by Susan W. Fox, Chair-Elect

The Appellate Practice Section met May 12 and 13, 2006, at Hutchinson Island Marriott Beach Resort, for the Section’s retreat which takes place once every three years. This article will summarize the goals established during the work sessions of the retreat.

1. Public Advocacy and Legislative initiative:
With so many events in the public arena affecting appellate practice, the Section will increase its advocacy within the legislature, The Florida Bar, the Governor’s office, the JNCs, and the courts with regard to issues important to appellate practitioners. Tom Warner has agreed to chair this committee and issues to be addressed include the district court of appeal’s assessment and work load issues, pay raises for judges and court personnel, electronic e-filing procedures, rule-making powers of the supreme court, and nomination of qualified appellate practitioners by the JNCs.

2. Financial Restructuring:
The Section will attempt to secure its financial future and independence by affiliating with an appropriate non-Bar organization, probably a 501c3 corporation whose finances would be independent of The Florida Bar. Tony Musto agreed to chair this initiative.

3. Local Chapters and Outreach to Government Lawyers:
Starting with Tallahassee and Central Florida, the Section will attempt to host local section meetings and
reach out to government lawyers. In addition, the Section will use existing local bar appellate groups and seminars to publicize the Section and its activities. Wendy Loquasto is organizing a meeting in Tallahassee; Chris Carlyle and Angela Flowers will attempt to organize a local gathering in Central Florida.

4. Web-Based Discussion Groups:
To increase day-to-day communication and education of members, the Section is studying the feasibility of using the website for message boards and discussion groups. The message boards will probably be broken down into substantive law areas such as: civil, criminal, family, land use, etc. Lucretia Pitts agreed to chair a committee to organize this initiative.

5. Website Enhancements:
As organizations move more and more information to the internet, the Section will continue to upgrade its website. Henry Gyden has agreed to chair the committee. Due to the workload involved, this committee will no longer be assigned to an executive officer. Some planned enhancements are: additional information and photographs of officers, a history of the Section, discussion groups, and identification of members by a sub-specialty area.

6. Hospitality, Recruitment, Open Leadership, and Transparency:
The Section will continue to encourage members to be actively involved in the work of the Section. Recruitment will be a responsibility of every executive council member. In addition, a hospitality committee to be chaired by Barbara Eagan and John Crabtree will endeavor to make sure that each member who attends a Section meeting is given a serious opportunity to serve on a section committee. In addition, a nominating committee will be appointed to establish an application process and criteria for choosing officers, executive council members, and committee chairs. While committee chair appointments remain discretionary with the chair, the nominating committee will be authorized to make suggestions.
The substance of an order, rather than how it is labeled, determines whether or not it is a partial final judgment. Shephard, 854 So. 2d at 252 (finding order titled “Partial Final Judgment” was not final even in a partial sense).

If a notice of appeal is filed before rendition of a final order, the appeal shall be subject to dismissal as premature.” Fla. R. App. P. 9.110(k).

The Second District follows a three-part test, which includes whether the cause of action could have been maintained independently, whether a party was removed from the action, and whether the counts involved the same facts. Dahl v. Dep’t. of Children and Family Servs., 876 So. 2d 1245, 1248 (Fla. 2d DCA 2004). I note that this test had been followed by the Second District before the court began following rule 9.110(k). See Szwczuk v. Bayshore Props., 456 So. 2d 1294, 1296 (Fla. 2d DCA 1984) (dismissing appeal as to portion of case previously disposed of because prior order was a partial final judgment as to the issues resolved therein). It would appear that an order need not satisfy all three parts of this test to be appealable as a partial final judgment because an order that disposes of a party must be immediately appealed even if related claims as to other parties remain pending. Another test is whether the claims are compulsory or permissive. See Palm Hill Villas Homeowners Ass’n v. Rose Green, 855 So. 2d 83 (Fla. 4th DCA 2003). However, whereas a compulsory counterclaim by definition has to be interrelated with the underlying claim, the opposite is not necessarily true. Additionally, to the extent that this test is useful, it is only because the test for compulsory or permissive claims requires a similar determination as to whether the claims arise out of the same subject matter.

The test for compulsory or permissive claims is useful if related claims as to other parties remain pending. See Duszlak v. Wands, 803 So. 2d 779 (Fla. 1st DCA 2001) (dismissing appeal because order was not a partial final judgment entirely dismissing a party from the litigation nor disposing of all interrelated claims).

See Wrinkle v. Cooper, 885 So. 2d 957 (Fla. 1st DCA 2004). I note that this test had been followed by the Second District before the court began following rule 9.110(k). See Shrink v. Cooper, 885 So. 2d 957 (Fla. 1st DCA 2004).

See generally Batu v. Signature Prop. of Northwest Fla., Inc., 903 So. 2d 985, 988 n.2 (Fla. 1st DCA 2005); Mang v. Country Comfort Inn, Inc., 559 So. 2d 672, 673 (Fla. 3d DCA 1990).

Id.

Note that a reservation of jurisdiction to enforce an order, or a reservation over collateral matters such as attorney’s fees and costs, will not affect the finality of the order. Therefore, an order that grants summary judgment for defendant X and enters judgment dismissing defendant X, thereby totally disposing of the entire case as to that defendant, but reserves jurisdiction to consider an award of attorney’s fees and costs will be final as to that defendant and must be immediately appealed within 30 days from the partial final judgment.

This is not an exhaustive list. Any defect that interferes with the finality or rendition of a final judgment, other than the pending non-related matters, will also render a partial final judgment non-appealable.

Fla. R. Civ. P. 1.100(a), (b).

Walters v. Ocean Gate Phase I Condominium, 925 So. 2d 440 (Fla. 5th DCA 2006) (affirming the traditional test for finality requiring that “no further action by the court will be necessary”).

Id.

This is not an exhaustive list. Any defect that interferes with the finality or rendition of a final judgment, other than the pending non-related matters, will also render a partial final judgment non-appealable.

Compare J & L Enter. v. Jones, 614 So. 2d 1151 (Fla. 4th DCA 1993) (reviewing order as final that entered judgment on one count and found other counts were rendered moot) with Monticello Ins. Co. v. Thompson, 743 So. 2d 1215 (Fla. 1st DCA 1999) (holding order determining entitlement to judgment is not sufficiently final to vest appellate jurisdiction in the court). An order that actually finalizes other claims to be most effectively disposes of those claims. However, an order that may have the effect of rendering other claims moot without expressly making the finding that they are rendered moot is similar to an order that determines entitlement to a judgment.

See, e.g., Couch v. Tropical Beach Resort Ass’n, 867 So. 2d 1219 (Fla. 1st DCA 2004) (dismissing appeal of order captioned as a Final Judgment that appeared to adjudicate the merits of two claims because the trial court reserved jurisdiction to consider related matters); Raymond James & Assoc., Inc. v. Godshall, 851 So. 2d 879 (Fla. 1st DCA 2003) (dismissing appeal from order that entered judgment but reserved jurisdiction over a related issue); Bunby & Stimpson, Inc. v. Peninsula Util. Corp., 179 So. 2d 414 (Fla. 3d DCA 1965) (dismissing appeal upon determination that order dismissing complaint, although final in form, was not a final order because a compulsory counterclaim remained pending).

Endnote 20.
The newest judge at the Fifth District Court of Appeal, Alan Lawson, is a man who likes challenges. Throughout his life, he has never shied away from the opportunity to try something new. This trait has provided him with a background in many areas of the law which should serve him well as an appellate judge.

Judge Lawson is a fourth generation Floridian, born in Lakeland and raised in Tallahassee. As a youth, he worked at a summer camp in North Carolina and “fell in love with the area.” When the time came to go to college, he and some other friends from camp chose Clemson University. Judge Lawson became an Emergency Medical Technician and worked his way through school in that challenging field. Despite having no background in law, Judge Lawson took a business law class from former Florida Supreme Court Justice Frederick B. Karl. The class had a huge impression on him, and “it was then that I decided to become a lawyer.”

Upon graduation from Clemson, Judge Lawson took a job lobbying for the Florida Department of Corrections. Soon after, he began to apply to law schools. His family was in Tallahassee, and despite having the opportunity to attend several Ivy League schools, and being offered a partial scholarship by Duke University, Judge Lawson opted to stay home and attend Florida State University on a full academic scholarship. During law school, Judge Lawson continued to work as an EMT as well as working for the Department of Commerce in Tourism Development. Apparently working those jobs did not hinder his studies since he went on to graduate second in his class. During his third year of law school, Judge Lawson also clerked for Circuit Judge (and later First District Court of Appeal Judge) Charles Miner.

After his clerkship, Judge Lawson accepted a position with Steel Hector & Davis. He spent two years in the firm’s Miami office before moving to the firm’s Tallahassee office where he practiced a wide variety of litigation, including general commercial cases, administrative as well as appellate litigation. Judge Lawson also worked on a large number of Public Service Commission cases and had a number of opportunities to argue before the Florida Supreme Court. However, after working in Tallahassee for over six years, Judge Lawson was ready for another challenge.

Judge Lawson’s wife is from the Orlando area, and he accepted a job with the Orange County Attorney’s Office where he was tasked with managing the multitude of lawsuits that had arisen out of the construction of the Orange County Courthouse. Judge Lawson spent five years at the county attorney’s office where he handled an extremely broad range of cases on the county’s behalf. The scope of his work ranged from constitutional issues, to section 1983 cases, to eminent domain cases, and beyond.

In 2001, Judge Lawson was appointed by Governor Bush to the circuit bench where he became a judge on January 1, 2002. Judge Lawson spent one year in Osceola County with a criminal docket. “Criminal law was new to me and I spent several months studying on nights and weekends trying to prepare for the cases I was handling,” says Judge Lawson. Judge Lawson then spent three years on the criminal bench in Orange County, though he did have the opportunity to work on some civil cases in Osceola County as well as some business court cases while in Orlando. “I loved every minute of it,” Judge Lawson said of his tenure as a circuit court judge. However, after four years on the circuit bench, Judge Lawson was ready for yet another new challenge. In 2005, Judge Lawson applied for an opening on the Fifth District Court of Appeal, and was appointed by Governor Bush to begin serving on the court on January 1, 2006.

When Judge Lawson was asked about his impressions of the appellate court, his first reaction was “it’s so quiet!” Though he has been on the appellate bench for a short time, Judge Lawson noted the extreme differences between the lifestyles of a circuit judge and an appellate judge. At the circuit court, Judge Lawson noted that “the volume of cases is just overwhelming, and much of the legal research done by circuit judges addresses the immediate matter at hand. The nature of the work on the circuit bench does not lend itself to great periods of time to ponder, think, and analyze. The pace of the work is completely different in the appellate court.”

Thus far, Judge Lawson is pleased with the variety of cases that he has been assigned. “I’ve greatly enjoyed the diversity of the cases,” said Judge Lawson. Though he knew several of the judges at the Fifth District Court of Appeal prior to joining them on the bench, Judge Lawson greatly benefited from the mentorship of the man he replaced: retired Judge Earle W. Peterson, Jr. “Judge Peterson was very helpful,” Judge Lawson said. “We spoke on the phone quite a bit, and we had the opportunity to get together on several occasions. He gave me great preparation for the job, including his best piece of advice: “Keep my staff!”

Judge Alan Lawson is a man with a wide and varied legal career, and those experiences will serve him well as an appellate judge. “I’m humbled by the opportunity, though I’m very excited to work at the Fifth District Court of Appeal,” Judge Lawson said.

Judge Lawson and his wife, Julie, have been married for 19 years. She teaches art at a private school in the Orlando area. They have two children. Caleb, age 17, is a high school junior. Leah, age 15, is a high school freshman. The entire family enjoys travel and outdoor activities, including snow skiing. Judge Lawson also enjoys reading.

Christopher V. Carlyle has an extensive background in appellate as well as commercial litigation. Prior to joining The Carlyle Appellate Law Firm, he practiced a wide range of commercial litigation with Holland and Knight, LLP and McLin & Burnsed, PA. Mr. Carlyle is admitted to practice in Florida state and federal courts, the U.S. Circuit Court of Appeals for the Eleventh Circuit, and the United States Supreme Court.
Florida Rules of Appellate Procedure are constantly evolving in order to adapt to changes in law or to clarify the method for seeking appellate review. To guide this evolution, The Florida Bar Appellate Court Rules Committee constantly responds to inquiries and proposed rule changes from the Florida Supreme Court, judges, lawyers, and non-lawyers. For the past six years, I have served as a member of The Florida Bar Appellate Court Rules Committee, culminating in my service as Chair for 2005-2006. Serving on this committee has been both challenging and enriching, providing the opportunity to participate in the rule-making process from start to finish and to watch the creation and revision of appellate rules. This article summarizes the framework of The Florida Bar Appellate Court Rules Committee and outlines the process that starts with an inquiry or proposal, and results in an amendment to the Florida Rules of Appellate Procedure.

**Florida Rules of Judicial Administration**

The framework for the creation of substantive rule committees and the rule-making process is outlined in the Florida Rules of Judicial Administration, which explain the standing subcommittees' roles and the methodology for creating, proposing, and adopting rules of procedure. As set forth therein, The Florida Bar appoints committees to consider rule proposals, to be comprised of attorneys and judges with extensive experience and training in the area of practice, who serve for three-year staggered terms. The President of The Florida Bar appoints chairs and vice-chairs for each committee. Any person may propose an amendment to a rule of procedure or request examination of a rule by sending a proposal, in writing, to the Clerk of the Supreme Court of Florida, who then sends the proposal to the appropriate substantive bar committee. Also, both lawyers and non-lawyers often send inquiries or proposed revisions directly to the chair of the committee. Of course, the chair or members of the committee can raise an issue by submitting it in writing to the chair, who then assigns the issue to the appropriate subcommittee for further evaluation and analysis. The chair also has the authority to determine that the matter proposed or a portion of the proposal is beyond the scope of the committee's authority and would be more appropriate for consideration by a different Florida Bar committee.

**The Officers and Subcommittees**

The Committee is directed by its officers and executive subcommittee. The officers include the chair, vice-chairs, and secretary, and the remaining members of the Executive
Subcommittee include the subcommittee chairs. As in many organizations, the bulk of the underlying legal work that forms the basis for rule proposals occurs at the subcommittee level, followed by the four general meetings occurring annually in conjunction with The Florida Bar section and committee meetings. Currently, the rules committee is comprised of the following standing subcommittees: Administrative Practice, Appellate Record, Civil Law, Criminal Law, Family Law, General Practice, Orientation, and Worker’s Compensation. Each of the foregoing subcommittees addresses unique issues falling within the applicable categories. In addition to the standing subcommittees, there are currently four special subcommittees—the Amicus Curiae Rules, Internal Operating Procedures, Electronic Service and Filing, and the Original Proceedings Subcommittees. Unlike the standing subcommittees, the special subcommittees are created by the committee chair and exist specifically to serve certain issues as may arise. Also, any special subcommittee can become a standing subcommittee if a majority of the members of the committee, upon thirty days’ notice, vote to amend the Internal Operating Procedures.

Once the chair assigns a project to a subcommittee, the subcommittee chair organizes a meeting to discuss the issue and consider the issue. Members of the subcommittee will circulate memoranda explaining the results of their research and ultimately propose an amendment or recommend no action. The subcommittee will ultimately present any proposed changes to the full committee.

**Consideration by the Full Committee**

Once subcommittee reports are generated, they are transmitted to the chair, who creates the agenda for each of the general meetings which coincide with The Florida Bar meetings. Absent an emergency request for consideration from the Supreme Court of Florida, the Board of Governors, or the chair, the agenda containing any proposed amendments must be transmitted to the committee members at least ten days before the full meeting. At the committee meeting, the chair, along with subcommittee chairs, delivers a report to advise the members regarding the status of projects and proposed amendments. The committee secretary is charged with the responsibility of keeping detailed minutes which will ultimately be provided to the Board of Governors, Supreme Court of Florida, and proponents of proposed amendments, as well as members of the Appellate Court Rules Committee.

Of course, open discussion and debate is encouraged, limited by traditional rules of parliamentary procedure and time constraints. While certain proposals are quickly adopted, many have generated long debates, resulting in deadlock and rejection of a proposal submitted by a subcommittee. If rejected, a proposed amendment can only be raised (in its prior form) at a future meeting by a member who originally voted against adoption of the proposed amendment. In order to pass at the committee level, a proposed amendment must be approved by a majority of present members. Absentee ballots or proxy voting is not authorized.

Because the rule-making process is dynamic, the chair has the discretion to request a subcommittee to expand its research or work with another subcommittee to clarify a proposal for future consideration. Along these lines, the chair has the discretion to appoint ad hoc subcommittee members who have experience in certain areas or who propose rule amendments and wish to participate in the process. Although ad hoc subcommittee members have the power to vote at the subcommittee level, they may not vote at the general meetings regarding proposed amendments.

Other than emergency proposals or out-of-cycle amendment proposals, the Rules of Judicial Administration provide a three-year cycle for submitting proposed amendments to the Supreme Court of Florida. In a regular reporting cycle, all proposed rule changes must be submitted to the Board of Governors by June 15 of the year prior to each reporting year, with the committee’s numerical voting record on each proposal. Under the recent amendment to the Rules of Judicial Administration, the committee must also provide a report to the Speaker of the Florida House of Representatives, the President of the Florida Senate, and the chairs of the House and Senate committees as designated by the Speaker and the President, published on the Internet website of The Florida Bar, and in the Florida Bar Journal or Florida Bar News.

Any person is entitled to submit a comment on a proposed rule by August 1 of the year prior to each reporting year to the committee, and the committee is obligated to consider the comment and report any revisions pursuant to the comment to the recipients of the proposed amendment. By December 15 of the year prior to each reporting year, the Board of Governors shall consider the proposals and vote to recommend acceptance, rejection, or an amendment to the committee’s proposal. By February 1 of each reporting year, the committee must file a report of its proposed rule changes with the Supreme Court. The report must also include a list of the changes for each proposal.

continued next page
proposed changes with an explanation thereof as well as the name of the proponent of the change; a final committee voting record on each proposal; a report of action taken on any comments submitted, a report of the Board of Governors’ voting record; a report of dissenting views, and an appendix with the necessary legislative format.\(^\text{20}\)

If oral argument is deemed necessary, the Supreme Court of Florida will schedule argument for May or June of each reporting year.\(^\text{21}\) Before oral argument, any person may file comments concerning the proposals, and the committee chair shall file a response to all comments within the time period set by the court.\(^\text{22}\) Prior to the date of the argument, the Clerk of the Supreme Court of Florida shall publish on the Internet websites of the Supreme Court and The Florida Bar all comments and responses regarding rule change proposals.\(^\text{23}\) Following consideration, the Supreme Court anticipates adopting rule proposals to allow time for the provisions to take effect by January 1 of the year following the reporting year.\(^\text{24}\)

**Emergency Proposals**

When a change in the law or other circumstance warrants immediate consideration of a proposal, the Florida Supreme Court, or the committee chair, may decide that immediate action is necessary. The Rules of Judicial Administration and the committee’s internal operating procedures provide the mechanism for immediate action. As a threshold matter, if the Committee and Board of Governors agree that emergency action is required, the proposal may be made to the Supreme Court of Florida at any time.\(^\text{25}\) If the court agrees that an emergency or other circumstance justifies out-of-cycle action, the court may set a time for argument and provide notice as provided in the applicable rule.\(^\text{26}\) The court also has the inherent authority to request the committee to consider a proposal and report its recommendations at any time.\(^\text{27}\)

The committee’s internal operating procedures describe the procedure for handling an emergency declared by the chair or when so directed by the Supreme Court of Florida.\(^\text{28}\) In such circumstances, the Executive Subcommittee has the power to act without regard for quorum or other amendment requirements set forth in the internal operating procedures. If the majority of the executive subcommittee proposes an amendment, the proposal must be provided to the full committee, which has ten days to respond.\(^\text{29}\) Votes in opposition must be submitted in writing to the chair and, unless one-third of the committee opposes the proposal, it shall be submitted to the Supreme Court of Florida. If the proposal is disapproved, the chair has the authority to call an emergency meeting of the full committee on ten days notice.

Once approved, the emergency proposal must be submitted immediately to the Supreme Court through an appropriate pleading, with a copy to the Board of Governors.\(^\text{30}\) Over the past few years, the out-of-cycle process has proven to be an extremely valuable mechanism for effecting immediate change, both for emergency proposals and for non-controversial changes that are necessary to avoid continuing confusion.

**The Committee’s Role**

One of the ongoing issues the committee faces is whether its role should be proactive or reactive and whether it should resolve perceived conflicts among Florida courts. Because of the inherent delay within the rule-making process – especially regarding the three-year cycle amendments, proactive action by the committee seems necessary to preemptively effect change as issues arise. Whether it takes on a predominantly proactive or reactive role, it is certain that the committee will continue to serve a vital function in the creation and maintenance of the Rules of Appellate Procedure.

**Endnotes**

1. Jack R. Reiter is Florida Bar Board Certified in Appellate Practice and AV- rated by Martindale-Hubbell. He chairs the appellate department at the law firm of Adorno & Yoss LLP and served as the Chair of The Florida Bar Appellate Court Rules Committee from June 2005 – June 2006. Reiter has published and lectured on appellate topics such as preservation of error, non-final appeals, and common law writs. He also graduated from the University of Florida with High Honors and is a member of the Order of the Coif.
2. Fla. R. Jud. Admin. 2.130.
5. Fla. R. Jud. Admin. 2.130(b)(2).
6. Committee Internal Operating Procedure V(a).
7. Committee Internal Operating Procedure V(b)(3)-(4). This determination must be reported to the full Committee, which can override the Chair on this issue by a two-thirds vote.
8. Committee Internal Operating Procedure II(a-c).
9. Committee Internal Operating Procedure III(b).
10. Committee Internal Operating Procedure VII.
11. Committee Internal Operating Procedure V(c).
12. Fla. R. Jud. Admin. (b)(6); Committee Internal Operating Procedure II(c).
13. Committee Internal Operating Procedure V(e).
14. Committee Internal Operating Procedure IV(c).
15. Fla. R. Jud. Admin. 2.130(c). The Supreme Court of Florida amended the Rules of Judicial Administration in 2005 to change the reporting cycle for all standing subcommittees from two years to three years to provide committees with more time for development of proposals and submission. This amendment became effective during the undersigned’s tenure as Chair, but after the reporting process had begun. Under the amendment, the Committee’s next reporting cycle changed to 2008. Thus, to avoid an additional three year delay for rules that had already been approved by the Board of Governors and reported to the general public, the Committee obtained leave for consideration of the proposed amendments out-of-cycle.
16. Fla. R. Jud. Admin. 2.130(c)(2).
17. Fla. R. Jud. Admin. 2.130(c)(2).
18. Fla. R. Jud. Admin. 2.130(c)(3).
21. Fla. R. Jud. Admin. 2.130(c)(5).
22. Fla. R. Jud. Admin. 2.130(c)(6).
23. Fla. R. Jud. Admin. 2.130(c)(6).
24. Fla. R. Jud. Admin. 2.130(c)(7).
25. Fla. R. Jud. Admin. 2.130(e).
26. Fla. R. Jud. Admin. 2.130(e). Pursuant to the rule, the court will provide notice to the committee chair and vice-chairs, the executive director of The Florida Bar, all members of the Judicial Management Council, the clerk and chief judge of each district court of appeal, the clerk and chief judge of each judicial circuit, and any person who has asked in writing filed with the clerk of the supreme court for a copy of the notice. The recommendations shall be published on the Internet websites of the supreme court and The Florida Bar, and in The Florida Bar Journal or Florida Bar News before the hearing.
27. Fla. R. Jud. Admin. 2.130(f).
28. Committee Internal Operating Procedure V(i).
29. Committee Internal Operating Procedure V(i).
30. Id.
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